IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Bail Appl..No. 4801 of 2007()

CRIME NO.373 OF 2006 OF CHINGAVANOM POLICE STATION,KOTTAYAM

: PETITIONER/SECOND ACCUSED:

SOJI DEVASSIA, AGED 30 YEARS,
S/O. ULAHANNAN, PUTHENPURACKAL HOUSE, UMBIDY(P.O),
(VIA) THOTTAKADU, UMBIDY MURY, KARUKACHAL VILLAGE,
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT,
PIN-686 539.

BY ADV. SRI.C.I.ABRAHAM
SRI.JOSEPH A.VADAKKEL
SRI.GEORGE KARITHANAM VARGHESE
SRI.V.J.JOHN
SMT.BINDU ABRAHAM

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REP. BY SUB INSPECTOR OF POLICE, CHINGAVANOM
POLICE STATION, KOTTAYAM DISTRICT, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4801 of 2007

Dated this the 9th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused in a crime registered under Section 392 r/w 34 I.P.C. Altogether there are 3 accused persons. The crux of the allegations is that the defacto complainant a police constable was travelling in a car, belonging to his friend, in respect of which there was an agreement with the I.C.I.C.I Bank. When the defacto complainant was returning with the car, he was allegedly attacked by the accused persons, 3 in number, who came in motorcycles, intimidated and threatened the defacto complainant by showing dangerous weapons and ultimately took away the car employing force. The alleged incident took place at 2.45 p.m on 29.10.06. The crime has been registered at 6 p.m on 29.10.06. Investigation is in progress. The petitioner apprehends imminent arrest. Accused 1 and 3 have already been arrested also.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner was a former employee of the I.C.I.C.I Bank. The Bank appears to have repossessed the vehicle in terms of the contract between the parties. To avoid the consequences of such repossession, the defacto complainant, a police

constable is only obliging the owner of the vehicle, his friend. The allegations are totally incorrect. Because of the grievances of the defacto complainant against the seizure of the vehicle false allegations are being raised against the petitioner, a former employee of the petitioner. The petitioner deserves to be granted anticipatory bail. Subject to appropriate conditions, anticipatory bail may be granted to the petitioner, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner is a person having criminal antecedents. He is a paid hireling engaged by others for resorting to violence. This is transparently a case where by employing muscle power, a person in legal possession of a vehicle has been dispossessed by the use of force. The action is not justifiable. Such illegal and contumacious action cannot be justified by any provisions of the agreement between the parties. The petitioner has to be arrested and interrogated. Custodial interrogation is absolutely essential. The petitioner may not be granted anticipatory bail, prays the learned Public Prosecutor .

4. In the facts and circumstances to which I have briefly referred above, I find merit in that opposition by the learned Public Prosecutor. This, I am satisfied, is not a fit case where the petitioner

deserves the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner must appear before the Investigating Officer or the learned Magistrate and then seek regular bail in the normal and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-